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7 ALEX PYGIN,
8 Plaintiff,
9 v.
10 BOMBAS, LLC, et al.,
11 Defendants.

Case No. [20-cv-04412-JSW](#)

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
GRANTING MOTION FOR FEES,
COSTS, AND SERVICE AWARD AND
ENTERING FINAL JUDGMENT**

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13 Re: Dkt. Nos. 52, 54
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This matter comes before the Court on consideration of the motions for final approval of a class action settlement (the “Settlement”) and for attorneys’ fees, costs, and a service award, filed by Plaintiff Alex Pygin (“Plaintiff”). Defendants, Bombas, LLC (“Bombas”), Shopify (USA), Inc., and Shopify, Inc. (collectively “Defendants”), do not oppose the motions. The Court has considered the parties’ papers, including Plaintiff’s written responses to questions the Court posed in advance of the fairness hearing, the lack of objections to the Settlement, and the record in this case, and it has analyzed relevant legal authority. The Court also has considered the parties’ arguments at the fairness hearing held on November 19, 2021.

For the reasons that follow, the Court HEREBY GRANTS Plaintiff’s motion for final approval and GRANTS the motion for attorneys’ fees, costs, and a service award.

BACKGROUND

On July 1, 2020, Plaintiff filed his Complaint, in which he asserted claims against Defendants for negligence, gross negligence, invasion of privacy, declaratory relief, and violations of California’s Unfair Competition Law, Business and Professions Code sections 17200, *et seq.* These claims arose after Bombas notified customers, on June 3, 2020, of a data breach (the “Data

1 Breach") that resulted from hackers using a malicious code to scrape information from Bombas'
2 website. That information included "customers' addresses and payment card information, which
3 likely included payment card numbers, CVV security codes, and payment card expiration dates."
4 (Compl. ¶ 2; *see also id.* ¶¶ 3-5.)¹ According to Plaintiff, his and the Settlement Class Members'
5 data was exposed between November 11, 2016 to February 16, 2017. Plaintiff alleged the
6 "hackers got everything they needed to illegally use Bombas' customers' payment cards to make
7 fraudulent purchases, and to steal the customers' identities." (*Id.*)

8 On September 28, 2020, Defendants filed motions to dismiss the Complaint. One of
9 Bombas' arguments was that Plaintiff lacked Article III standing. After briefing was complete,
10 but before the Court issued a ruling on the motions, the parties stipulated to stay the case because
11 they had settled the Litigation.

12 On July 12, 2021, the Court preliminarily approved the Settlement, preliminarily appointed
13 Plaintiff as the Representative Plaintiff and his counsel as Class Counsel, and preliminarily
14 approved a settlement class consisting of: All individuals residing in the United States who made
15 purchases on the Bombas website from November 11, 2016 to February 16, 2017. (Dkt. No. 51,
16 Preliminary Approval Order, ¶ 3.)²

17 Pursuant to the notice requirements in the Settlement Agreement and the Preliminary
18 Approval Order, Angeion Group ("Angeion") began to provide Notice to Settlement Class
19 Members on or about August 8, 2021. (See Dkt. No. 54-3, Declaration of Stephen Weisbrot of
20 Angeion Group ("Weisbrot Decl."), ¶¶ 5-12.)

21 On September 3, 2021, Plaintiff filed his fee motion, and on October 15, 2021, Plaintiff
22 filed his motion for final approval of the Settlement. The Court will address additional facts as
23 necessary in its analysis.

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26 ¹ Plaintiff alleges the Shopify Defendants provide Bombas with the e-commerce point-of-
27 sale platform used to take customer's personal and payment information. (Compl. ¶ 1.)

28 ² The Court inadvertently omitted the following portion of the definition of the Settlement
Class: "and received notice from Bombas concerning the Security Incident on or about June 3,
2020."

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ANALYSIS

2 **A. Subject Matter Jurisdiction.**

3 Plaintiff alleged the Court has subject matter jurisdiction pursuant to the Class Action
 4 Fairness Act. Based on the allegations, the Court is persuaded that the parties are minimally
 5 diverse, there are at least 100 Class Members, and that the amount in controversy would exceed
 6 \$5,000,000. (See, e.g., Compl. ¶¶ 64, 82.)

7 **B. Standing.**

8 Before it can approve the Settlement, the Court also must ensure that Plaintiff has standing.
 9 See *Frank v. Gaos*, -- U.S. --, 139 S.Ct. 1041, 1046 (2019). Plaintiff did not raise the fact that
 10 Bombas had moved to dismiss for lack of Article III standing when he moved for preliminary
 11 approval of the Settlement. Plaintiff did raise that issue in the motion for final approval, which
 12 prompted the Court to require Plaintiff to establish his best case for Article III standing.

13 The “irreducible constitutional minimum” of standing consists of three elements: an injury-
 14 in-fact, causation, and redressability.³ *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing
 15 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (“*Defs. of Wildlife*”)). “A plaintiff
 16 threatened with future injury has standing to sue if the threatened injury is certainly impending, or
 17 there is a substantial risk that the harm will occur.” *In re Zappos.com, Inc.*, 888 F.3d 1020, 1024
 18 (9th Cir. 2018) (internal citations and quotations omitted).

19 Plaintiff must prove each element with the same manner and degree of evidence required at
 20 each stage of the litigation. *Defs. of Wildlife*, 504 U.S. at 561. For example, “[a]t the pleading
 21 stage, general factual allegations of injury resulting from the defendant’s conduct may suffice”
 22 because of the presumption “that general allegations embrace those specific facts that are
 23 necessary to support the claim.” *Id.* at 561 (quoting *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871,
 24

25 ³ In a class action, standing exists where at least one named plaintiff meets these
 26 requirements. *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 865 (9th Cir. 2014).
 27 Here, Plaintiff is the only class representative so he must be able to show he has standing. *Lewis*
 28 *v. Casey*, 518 U.S. 343, 347 (1996) (stating that “named plaintiffs who represent a class must
 29 allege and show they personally have been injured, not that injury has been suffered by other,
 30 unidentified members of the class to which they belong and which they purport to represent”)
 31 (internal quotation marks omitted).

1 889 (1990)).

2 According to Plaintiff, he spent time “dealing with the consequences of the breach, which
3 include[d] time spent confirming that he made a purchase by payment card during the relevant
4 period, reviewing the account compromised by the breach, contacting Bombas and his credit card
5 company, exploring credit monitoring and identity theft insurance options, and self-monitoring his
6 accounts.” (Compl. ¶ 52.) He also alleged that he was not aware of any other data breaches that
7 could have resulted in the theft of his credit card information. Plaintiff did not allege any
8 unauthorized use of the credit card at issue. (*Id.* ¶ 53; *see generally* Complaint.)

9 Plaintiff concedes there is no indication his personal information was misused. However,
10 he argues that is not necessary to establish standing. He argues it is reasonable to infer that the
11 hackers intended to use the data for fraudulent purposes, which shows a substantial risk of harm.
12 He also argues the allegations that he was required to expend time and effort to mitigate the
13 potential harm from the Data Breach provide a basis to find injury in fact. Plaintiff also points to
14 the fact that Settlement Class Members have submitted claims that Angeion has deemed valid.
15 Because this case is beyond the initial pleadings phase, the Court considers the latter information
16 as evidence that would corroborate Plaintiff’s risk of harm.

17 In *Krottner v. Starbucks, Corp.*, the Ninth Circuit held that the plaintiffs sufficiently
18 alleged standing based on the theft of a laptop containing their unencrypted names, addresses, and
19 other personally identifying information, including their social security numbers. 628 F.3d 1139,
20 1140 (9th Cir. 2010). Although there was no evidence that the thief had actually misused the
21 information, the Ninth Circuit held the plaintiffs sufficiently alleged “a credible threat of real and
22 immediate harm.” *Id.* at 1143. In *In re Zappos*, the court held that *Krottner* remains good law
23 following the United States Supreme Court’s decision in *Clapper v. Amnesty, International*, 568
24 U.S. 398 (2013). 888 F.3d at 1025-26. The *In re Zappos* court also concluded that the plaintiffs
25 sufficiently alleged standing where their credit card information had been compromised during a
26 data breach, even though there was no indication it had actually been misused. *Id.* at 1027. The
27 court also rejected the defendant’s argument that too much time had elapsed to allow for
28 “imminent harm.” *Id.* at 1028. Unlike Plaintiff, however, the named plaintiffs in *In re Zappos*

1 also alleged the hackers had taken over their AOL accounts and sent advertisements to individuals
2 in their contacts. *Id.* at 1027-28; *see also Dugas v. Starwood Hotels & Resorts Worldwide, Inc.*,
3 No. 16-cv-00014-GPC-BLM, 2016 WL 6523428, at * (S.D. Cal. Nov. 3, 2016) (stating that
4 *Krottner* teaches that “where sensitive personal data, such as names, addresses, social security
5 numbers, and credit card numbers are improperly disclosed or disseminated into the public --
6 thereby increasing the risk of future harm to plaintiff -- injury in fact has been sufficiently alleged”
7 but concluding plaintiff had not alleged sufficient facts to show injury in fact based on future
8 harm, in part because credit card involved was cancelled).

9 The Court concludes the facts alleged are sufficient to reasonably infer that the hackers’
10 intent was not benign and, thus, that the Data Breach created a substantial risk of harm to Plaintiff
11 and the Settlement Class Members; an inference supported by the claims that have been submitted
12 to date. In addition, Plaintiff has stated that he has expended time and effort to monitor his credit,
13 which courts have found sufficient to allege the injury in fact element of standing. *See, e.g.*,
14 *Walters v. Kimpton Hotel & Restaurant Grp.*, No. 16-cv-05387-VC, 2017 WL 1398660, at *1
15 (N.D. Cal. Apr. 13, 2017) (citing *Lewert v. P.F. Chang’s China Bistro*, 819 F.3d 963, 965, 967-68
16 (7th Cir. 2016)); *Dugas*, 2016 WL 6523428, at *6 (finding plaintiff did allege standing based on
17 allegations of lost productivity due to need to mitigate exposure to fraudulent charges). The Court
18 also concludes Plaintiff’s allegations, combined with the evidence of the claims submitted to date,
19 are sufficient to establish the requisite causal connection to Defendants’ conduct and that
20 Plaintiff’s alleged injuries are redressable.

21 Accordingly, the Court concludes Plaintiff has provided the Court with a sufficient basis to
22 conclude that he has Article III standing. Therefore, the Court turns to the merits of the motions.

23 **C. The Court Grants the Motion for Final Approval.**

24 **1. The Requirements of Rules 23(a) and 23(b).**

25 The Court preliminarily determined Plaintiff had satisfied the requirements of Rule 23(a)
26 and 23(b). The relevant facts have not changed, and the Court incorporates the findings from the
27 Preliminary Approval Order herein. The Court concludes those requirements have been met for
28 final approval.

1 **2. Notice, Objections, and Requests for Exclusion.**

2 The Court also concludes that the Notice: (a) fully and accurately informed Settlement
3 Class Members about the Litigation and the existence and terms of the Settlement Agreement; (b)
4 advised Settlement Class Members of their right to request exclusion from the Settlement and
5 provided sufficient information so that Settlement Class Members were able to decide whether to
6 accept the benefits offered, opt out and pursue their own remedies, or object to the proposed
7 Settlement; (c) provided procedures for Settlement Class Members to file written objections to the
8 proposed Settlement, to appear at the Final Approval Hearing, and to state objections to the
9 proposed Settlement; and (d) provided the time, date, and place of the Final Approval Hearing.

10 Accordingly, the Court concludes the Notice provided: (i) was the best notice practicable
11 under the circumstances; (ii) was reasonably calculated to provide, and did provide due and
12 sufficient notice to the Settlement Class Members regarding the existence and nature of the
13 Litigation, certification of the Settlement Class for settlement purposes only, the existence and
14 terms of the Settlement Agreement, and the rights of Settlement Class Members to exclude
15 themselves from the Settlement, to object and appear at the Final Approval Hearing, and to receive
16 benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules
17 of Civil Procedure, the United States Constitution, and all other applicable law.

18 The Court did not receive any objections or comments to the Settlement from any
19 Settlement Class Member or from persons or entities to whom notice was provided under the
20 Class Action Fairness Act. Angeion and Class Counsel also have reported they did not receive
21 any objections. (*See* Weisbrot Decl., ¶¶ 14-15; Dkt. No. 55-1, Reply Declaration of M. Anderson
22 Berry (“Berry Reply Decl.”), ¶ 11; Dkt. No. 59-1, Supplemental Declaration of M. Anderson
23 Berry, ¶ 6.)

24 Accordingly, all persons who did not object to the Settlement in the manner set forth in the
25 Settlement Agreement are deemed to have waived any objections, including but not limited to by
26 appeal, collateral attack, or otherwise. In addition, the record demonstrates that no Settlement
27 Class Members made a valid and timely request to be excluded from the Settlement. All
28

1 Settlement Class Members who have not excluded themselves from the Settlement Class are
2 bound by this Final Approval Order and Judgment.

3 **3. The Relevant Factors Weigh in Favor of Concluding the Settlement is Fair,
4 Reasonable, and Adequate.**

5 Federal Rule of Civil Procedure 23(e) permits a court to approve a settlement that will bind
6 a class “only on finding that it is fair, reasonable, and adequate after considering” a number of
7 factors. Fed. R. Civ. P. 23(e)(2); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
8 1998). The factors the Court must consider are whether:

9 the class representatives and class counsel have adequately
10 represented the class; the proposal was negotiated at arm’s length;
11 the relief provided for the class is adequate, taking into account: (i)
12 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of
13 any proposed method of distributing relief to the class, including the
14 method of processing class-member claims; (iii) the terms of any
15 proposed award of attorney’s fees, including timing of payment; and
16 (iv) any agreement required to be identified under Rule 23(e)(3);
17 and the proposal treats class members equitably relative to each
18 other.

19 Fed. R. Civ. P. 23(e)(2)(A)-(D).

20 Plaintiff and Class Counsel have adequately represented the Settlement Class Members.
21 Accordingly, the Court grants final approval to the appointment of Plaintiff Alex Pygin as the
22 Class Representative and grants final approval to the appointment John A. Yanchunis of Morgan
23 & Morgan Complex Litigation Group, and M. Anderson Berry of Clayeo C. Arnold, A
24 Professional Law Corporation, as Class Counsel.

25 The Settlement appears to be the result of serious, informed, and non-collusive
26 negotiations conducted with the assistance of Martin Quinn, Esq. of JAMS during a mediation
27 session conducted on February 12, 2021. Through that process, the parties negotiated and
28 finalized the basic terms of the Settlement Agreement and resolved issues relating to attorneys’
fees only after they had agreed upon the substantive terms of the Settlement. (Dkt. No. 54-2, Joint
Declaration of John A. Yanchunis and M. Anderson Berry in Support of Motion for Final
Approval (“Joint Decl.”), ¶¶ 5-9.) The Court also concludes that the Settlement is a product of an
informal exchange of information and the terms of the Settlement Agreement do not improperly

1 grant preferential treatment to any individual segment of the Settlement Class.

2 The parties negotiated a settlement fund of \$225,000.00, which will be used to provide
3 monetary relief to the approximately 83,000 Settlement Class Members. The fund also covers
4 Angeion's costs, attorneys' fees and costs, and the requested service award. In addition to the
5 monetary relief, the parties also negotiated changes to Bombas' business practices that are
6 designed to enhance the security of its e-commerce platform. Plaintiff has adequately described
7 the risks associated with taking this case to trial, including the possibility that he would not be able
8 to maintain class action status up to and including trial. The parties also provided for an effective
9 method for Settlement Class Members to submit claims – allowing for either a basic award or a
10 method to obtain reimbursement for fraudulent charges. As the Court notes, there have been no
11 objections to the Settlement, and the favorable reaction also favors granting the motion.

12 The Court concludes the Settlement is fair, reasonable, adequate and in the best interests of
13 Settlement Class Members, and it GRANTS Plaintiff's motion for final approval.

14 **D. The Court Grants the Motion for Fees, Costs, and Service Award.**

15 As part of the Settlement Agreement, the parties agreed that Plaintiff could seek a fee
16 award that would not exceed \$56,250.00. The Court has an "independent obligation" to ensure
17 Plaintiff's fee request is reasonable. *See, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654
18 F.3d 935, 941 (9th Cir. 2011). "The reasonableness of any fee award must be considered against
19 the backdrop of the American Rule, which provides that courts generally are without discretion to
20 award attorneys' fees to a prevailing plaintiff unless: (1) fee-shifting is expressly authorized by the
21 governing statute; (2) the opponents acted in bad faith or willfully violated a court order; or (3) the
22 successful litigants have created a common fund for recovery or extended a substantial benefit to a
23 class." *Id.* (internal quotations and citations omitted).

24 Plaintiff's claims are based on state law, and the Court applies state law with respect to the
25 fee request. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Under
26 California law, "[t]he primary method for establishing the amount of reasonable attorney fees is
27 the lodestar method." *In re Vitamin Cases*, 110 Cal. App. 4th 1041, 1052 (2003) (internal
28 quotation marks and citations omitted). There are two methods of calculating attorneys' fees in

1 civil class actions: (1) the lodestar/multiplier method, and (2) the percentage of recovery method.
2 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001), *disapproved of on other*
3 *grounds by Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). Under Ninth Circuit law,
4 the district court has discretion in common fund cases to choose either the lodestar method or the
5 percentage of recovery. *Vizcaino*, 290 F.3d at 1047; *In re Mercury Interactive Corp.*, 618 F.3d
6 988, 992 (9th Cir. 2010). California law also allows courts to use the percentage of recovery
7 approach with a lodestar cross-check. *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 503 (2016).

8 **1. Percentage-of-Recovery.**

9 Under the percentage of recovery approach, the Court considers total value of the benefits
10 conferred on the class. *See, e.g., Vizcaino*, 290 F.3d at 1047-49; *Serrano v. Priest*, 20 Cal. 3d 25,
11 34 (1977). Under the “percentage-of-recovery” method, “courts typically calculate 25% of the
12 fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record
13 of any ‘special circumstances’ justifying a departure.” *In re Bluetooth Headset*, 654 F.3d at 941
14 (quoting *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)).
15 “The Ninth Circuit has identified several factors a court should consider to determine whether to
16 adjust a fee award from the benchmark: (1) the results achieved; (2) the risk of litigation; (3) the
17 skill required and the quality of work; (4) the contingent nature of the fee and the financial burden
18 carried by the plaintiffs; and (5) awards made in similar cases.” *In re Lenovo Adware Litig.*, No.
19 15-md-02624-HSG, 2019 WL 1791480, at *8 (N.D. Cal. Apr. 24, 2019) (citing *Vizcaino*, 290 F.3d
20 at 1048-50).

21 Viewed from a “percentage of fund” perspective, the fee request here of \$56,250
22 represents 25% of the Settlement Fund and falls squarely within the Ninth Circuit’s benchmark.
23 For the reasons discussed above in connection with the final approval, the Court finds the first
24 three factors weigh in favor of concluding a benchmark award is reasonable. (*See also* Joint Decl.,
25 ¶ 19.) Class Counsel took the case on a contingent basis and attest that work on this case
26 precluded them from employment on other cases, and that factor also weighs in favor of finding
27 that a benchmark award is reasonable. (*Id.*, ¶ 22; Dkt. No. 52-2, Declaration of M. Anderson
28 Berry in Support of Fee Motion (“Berry Fee Decl.”), ¶ 21; Dkt. No. 52-3, Declaration of John A.

1 Yanchunis in Support of Fee Motion (“Yanchunis Fee Decl.”), ¶ 23.) Finally, Plaintiff has
2 presented information from which the Court can conclude that a benchmark award is in line with
3 awards in similar cases. (Fee Motion at 13:2-9 (citing cases).) The Court also considers the value
4 of the non-monetary relief obtained by Plaintiff. *Serrano*, 20 Cal. 3d at 34; *see also Walsh v.*
5 *Kindred Healthcare*, No. 11-cv-50-JSW, 2013 WL 6623224, at *3 (N.D. Cal. Dec. 16, 2013)
6 (“[t]he parties also negotiated substantial injunctive relief, and when the Court considers the value
7 of that injunction, it reduces the overall percentage of fees that counsel will receive”).

8 Accordingly, the Court finds that the percentage-of-recovery analysis demonstrates the
9 propriety of Plaintiff’s requested fees.

10 **2. Lodestar.**

11 Under the lodestar method, the Court calculates “the number of hours reasonably expended
12 on the litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433
13 (1983); *see also In re Bluetooth Headset*, 654 F.3d at 941 (“The lodestar figure is calculated by
14 multiplying the number of hours the prevailing party reasonably expended on the litigation (as
15 supported by adequate documentation) by a reasonable hourly rate for the region and for the
16 experience of the lawyer.”).

17 Mr. Berry attests that, in total, he and his firm have expended 279.6 hours for an
18 unadjusted lodestar of \$130,967.70. (Berry Reply Decl., ¶ 3.) Mr. Yanchunis attests that he and
19 his firm have expended over 39 hours on the case for an unadjusted lodestar of \$36,720.00.
20 (Yanchunis Fee Decl., ¶ 11; *see also* Berry Reply Decl., ¶ 5.) The Court has reviewed Class
21 Counsels’ declarations and their supplemental chart, which provided additional details on the type
22 of work performed. (Supp. Berry Decl., ¶¶ 3-4, Ex. A.) The total hours claimed by Class Counsel
23 are approved based on evidence presented of the work performed and the results achieved. The
24 Court is also satisfied that Class Counsel have exercised appropriate and significant billing
25 judgment by not requesting fees for unproductive or duplicative work. Accordingly, the Court
26 finds the number of hours that Class Counsel devoted to this case is reasonable.

27 The second step in the lodestar analysis is to determine the reasonable market value of the
28 attorneys’ services at an hourly rate. The Court has examined whether Class Counsel’s hourly

1 rates are reasonable within the “relevant community,” *i.e.*, the Northern District of California.
2 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). Plaintiff bears the burden to
3 “produce satisfactory evidence – in addition to the attorney’s own affidavits – that the requested
4 rates are in line with those prevailing in the community for similar services by lawyers of
5 reasonably comparable skill, experience, and reputation.” *Id.*, at 980.

6 Counsel attest that their rates are commensurate with rates within the relevant community,
7 and they have cited examples of cases in which courts have approved similar rates. (Berry Fee
8 Decl., ¶¶ 15, 19; Yanchunis Fee Decl., ¶ 14.)⁴ In large part, the Court finds the hourly rates
9 requested by Class Counsel to be reasonable and in line with the market rates charged by skilled
10 counsel in the Northern District in similar complex civil litigation. For the reasons that follow, to
11 the extent those rates are not commensurate with the market rates in the Northern District of
12 California, the Court concludes it is not necessary to make adjustments to those rates or to reduce
13 the fee award.

14 A court may adjust the lodestar “upward or downward by an appropriate positive or
15 negative multiplier reflecting a host of reasonableness factors, including the quality of
16 representation, the benefit obtained for the class, the complexity and novelty of the issues
17 presented, and the risk of nonpayment[.]” *Hanlon*, 150 F.3d at 1029. Class Counsel bore the
18 substantial risk of an uncertain outcome in agreeing to prosecute this case purely on a contingency
19 fee basis, and they have continued to incur fees since they filed the fee motion and the motion for
20 final approval. Indeed, as of November 5, 2021, Class Counsel’s lodestar fee continues to exceed
21 the amount of fees they are seeking, and the fee award represents a negative multiplier of 0.335.

22 The Court concludes that, under the lodestar method, Class Counsel’s request for fees is
23 reasonable.

24 Accordingly, the Court GRANTS Plaintiff’s motion for attorneys’ fees, and it awards

25
26 ⁴ Although Mr. Yanchunis does not provide detail about the experience of the partner and
27 associate who assisted him, each of whom billed at \$894.00 per hour, given the negative multiplier
28 involved, the Court will not reduce those rates. Should Mr. Yanchunis appear before this Court in
the future, he shall be prepared to provide sufficient information about all attorneys working on a
case, so that the Court can assess whether the rates charged are reasonable.

1 \$56,250.00 in fees to Class Counsel.

2 **E. The Court Grants the Request for Costs.**

3 Under the Settlement Agreement, Plaintiff is entitled to seek reimbursement of the
4 reasonable costs and litigation expenses. *See also* Fed. R. Civ. P. 23(h); *Van Vranken v. Atl.*
5 *Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving reasonable costs in class action
6 settlement). Plaintiff seeks the reimbursement of litigation expenses and costs in the amount of
7 \$8,066.37, which includes court fees, fees for service of process, postage, legal research, and
8 mediation fees. (Berry Fee Decl., ¶ 22; Yanchunis Fee Decl., ¶ 21.) The Court concludes the
9 request is reasonable and is documented adequately in Class Counsels' declarations. *See, e.g., In*
10 *re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995).

11 The Court GRANTS Plaintiff's motion for reimbursement of reasonable litigation
12 expenses and costs in the amount of \$8,066.37.

13 **F. The Court Grants Plaintiff's Request for a Service Award.**

14 Finally, Plaintiff moves for a service award in the amount of \$1,000. "Incentive awards
15 are fairly typical in class action cases." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958
16 (9th Cir. 2009). The decision to approve such an award is a matter within the Court's discretion.
17 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000). An incentive award is
18 designed to "compensate class representatives for work done on behalf of the class, to make up for
19 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
20 willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at 958-59. "[D]istrict courts
21 must be vigilant in scrutinizing all incentive awards to determine whether they destroy the
22 adequacy of the class representatives. ... [C]oncerns over potential conflicts may be especially
23 pressing where, ... the proposed service fees greatly exceed the payments to absent class
24 members." *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013) (internal
25 citation and quotation marks omitted).

26 Plaintiff attests he has spent approximately 10 hours of his time on this litigation, and has
27 worked closely with Class Counsel in litigating this case. (Dkt. No. 52-4, Declaration of Alex
28 Pygin, ¶¶ 7-8.) The request of \$1,000 is below the presumptive benchmark for service awards in

1 this District. *See, e.g., In re Chrysler-Dodge-Jeep Ecodiesel Marketing and Sales Practices Litig.*,
2 No. 17-md-02777-EMC, 2019 WL 536661, at *9 (N.D. Cal. Feb. 11, 2019) (noting that \$5,000 is
3 “presumptive[ly]” reasonable).

4 Accordingly, the Court GRANTS Plaintiff’s motion for a service award in the amount of
5 \$1,000.

6 CONCLUSION

7 For the foregoing reasons, the Court GRANTS Plaintiff’s motions for final approval and
8 for attorneys’ fees, costs, and a service award.

9 It is FURTHER ORDERED that each Settlement Class Member, including Plaintiff is

10 (1) deemed to have completely and unconditionally released, forever
11 discharged and acquitted Defendants and the Released Persons from
12 all claims arising out of or asserted in the Litigation and all Released
13 Claims released under the Settlement Agreement; and (2) barred and
14 permanently enjoined from asserting, instituting, or prosecuting,
either directly or indirectly, these claims. The full terms of the
release described in this paragraph are set forth in Paragraphs 1.28-
1.30 and Section 8 of the Settlement Agreement and are specifically
approved and incorporated herein by this reference (the “Release”).

15 In addition, Plaintiff and, by operation of this Final Approval Order and Judgment, each
16 Settlement Class Member, is deemed to have waived:

17 (i) the provisions of California Civil Code § 1542, which provides
18 that a general release does not extend to claims that the creditor or
19 releasing party does not know or suspect to exist in his or her favor
20 at the time of executing the release and that, if known by him or her,
21 would have materially affected his or her settlement with the debtor
22 or released party, and (ii) any law of any state or territory of the
23 United States that is similar, comparable, or equivalent to California
24 Civil Code § 1542.

25 It is FURTHER ORDERED that the Settlement Agreement and this Final Approval Order
26 and Judgment apply to all claims or causes of action settled under the Settlement Agreement, and
27 binds Plaintiff and all Settlement Class Members who did not properly request exclusion. The
28 Settlement Agreement and this Final Approval Order and Judgment shall have maximum res
judicata, collateral estoppel, and all other preclusive effect in any and all causes of action, claims
for relief, suits, demands, petitions, or any other challenges or allegations that arise out of or relate
to the subject matter of the Litigation and/or the Complaint.

1 It is FURTHER ORDERED that the Parties shall carry out their respective obligations
2 under the Settlement Agreement in accordance with its terms. The relief provided for in the
3 Settlement Agreement shall be made available to the various Settlement Class Members
4 submitting valid Claim forms, pursuant to the terms and conditions in the Settlement Agreement.
5 The Settlement Agreement is incorporated herein in its entirety as if fully set forth herein and shall
6 have the same force and effect of an order of this Court.

7 It is FURTHER ORDERED that the Settlement Fund, consisting \$225,000.00, shall be
8 used to pay all costs of the Settlement, including all Awards and payments to Settlement Class
9 Members, costs of Claims Administration, payments made to the Claims Referee, the Attorneys'
10 Fees and Expenses Award to Class Counsel, and the Plaintiff's Service Award. If any money
11 remains in the Settlement Fund after the payment of all Settlement Payments to Settlement Class
12 Members, costs of Claims Administration, the Attorneys' Fees and Expenses Award to Class
13 Counsel, and the Class Representative's Service Award, the Parties shall return to the Court
14 seeking direction as to the disposition of these funds, including the selection of a *cy pres* recipient,
15 pursuant to Paragraph 7.6 of the Settlement Agreement.

16 It is FURTHER ORDERED that the Settlement Agreement and this Final Approval Order
17 and Judgment, and all documents, supporting materials, representations, statements and
18 proceedings relating to the Settlement, are not, and shall not be construed as, used as, or deemed
19 evidence of, any admission by or against Defendants of liability, fault, wrongdoing, or violation of
20 any law, or of the validity or certifiability for litigation purposes of the Settlement Class or any
21 claims that were or could have been asserted in the Litigation, or that Shopify Inc. is subject to the
22 personal jurisdiction of this Court for purposes other than this Settlement.

23 It is FURTHER ORDERED that the Settlement Agreement and this Final Approval Order
24 and Judgment, and all documents, supporting materials, representations, statements and
25 proceedings relating to the Settlement shall not be offered or received into evidence, and are not
26 admissible into evidence, in any action or proceeding, except that the Settlement Agreement and
27 this Final Approval Order and Judgment may be filed in any action by any Defendant or the
28 Settlement Class Members seeking to enforce the Settlement Agreement or the Final Approval

1 Order and Judgment.

2 It is FURTHER ORDERED that, consistent with Section 10 of the Settlement Agreement,
3 if the Effective Date does not occur for any reason, the following will occur: (a) this Final
4 Approval Order and Judgment and all of their provisions, will be vacated, including, but not
5 limited to the Attorneys' Fees and Expenses Award and the Plaintiff's Service Award, and the
6 Final Approval Order and Judgment will not waive, release or otherwise impact the Parties' rights
7 or arguments in any respect; and (b) the Litigation will revert to the status that existed before the
8 Settlement Agreement's execution date, and the Parties shall be restored to their respective
9 positions in the Litigation as if the Settlement Agreement had never been entered into. No term or
10 draft of the Settlement Agreement, or any part of the Parties' settlement discussions, negotiations,
11 or documentation will have any effect or be admissible in evidence for any purpose in the
12 Litigation.

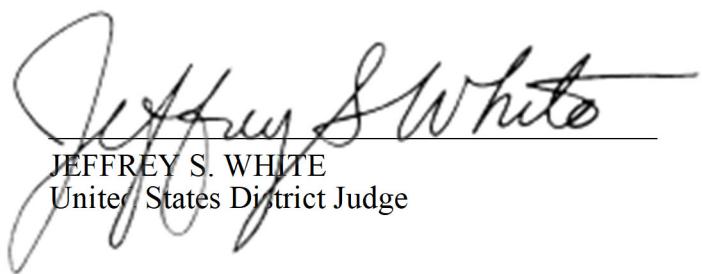
13 It is FURTHER ORDERED that within 21 days after the distribution of the Settlement
14 Funds and payment of attorneys' fees, the Parties will file a Post-Distribution Accounting with the
15 Court and post it on the Settlement Website.

16 It is FURTHER ORDERED that, without affecting the finality of this Final Approval
17 Order and Judgment, the Court will retain jurisdiction over this Litigation and the Parties with
18 respect to the interpretation, implementation and enforcement of the Settlement Agreement for all
19 purposes.

20 The Court hereby dismisses the Action in its entirety with prejudice, and without fees or
21 costs except as otherwise provided for herein and HEREBY ENTERS JUDGMENT in this matter
22 pursuant to Rule 58 of the Federal Rules of Civil Procedure. The Clerk shall close the file.

23 **IT IS SO ORDERED.**

24 Dated: November 29, 2021



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JEFFREY S. WHITE
United States District Judge